

DIVISION II

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
WENDELL L. GRIFFEN, Judge

CA06-14

CAROLYN EDGIN  
APPELLANT

August 30, 2006  
AN APPEAL FROM ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F200450]

V.

EXPRESS PERSONNEL SERVICES and  
AMERICAN HOME ASSURANCE CO.,  
GALLAGHER BASSETT SERVICES, INC.,  
Insuror

APPELLEES

AFFIRMED

Carolyn Edgin appeals from the denial of workers' compensation benefits by the Arkansas Workers' Compensation Commission. She raises three arguments, one relating to the Commission's finding that she was not a credible witness, and two relating to the sufficiency of the evidence supporting the Commission's determination that she failed to prove her injury was work-related. As none of her arguments are persuasive, we affirm the Commission's order.

Edgin was employed by Express Personnel Services, a temporary employment agency. On July 16, 2001, pursuant to her employment, Edgin was working at Leisure Arts, a printing company located in Little Rock, Arkansas. While carrying books, she tripped on a mat, twisted, and fell against a waist-high rail. Edgin was familiar with the proper method for filing a worker's compensation claim, having previously filed for and received worker's compensation benefits in an unrelated case. She testified that she immediately reported the incident in the instant case. However, she did not complete an injury form until three months later, on October 17, 2001. The employer originally accepted the claim as compensable, as

it related to Edgin's right knee and ankle, but later controverted liability for injuries related to her lower back.

Edgin first sought treatment for her right-knee and right-ankle injuries from Dr. Robert Rook on July 20, 2001, for which he prescribed pain medication. She continued treatment with Dr. Rook through October 2001; none of Dr. Rook's medical records through that date indicate that Edgin reported a back injury. However, on November 27, 2001, Dr. Rook noted that Edgin had a past medical history significant for a bulging disk in her back. He assessed her with lumbar strain, which he treated conservatively with medication.

At the employer's request, Edgin saw Dr. Kenneth Rosenzweig on October 22, 2001. Edgin again reported right-knee and right-ankle symptoms relating to her July 16 injury. She also reported chronic back pain on that date, although at the hearing, she denied that she did so. Dr. Rosenzweig's ultimate impression was chronic discomfort in Edgin's right knee and ankle due to her injury. He referred Edgin for an MRI of her right knee and ankle. The MRI, performed on November 16, 2001, revealed normal results for her ankle and mild swelling in her knee. Accordingly, Dr. Rosenzweig thereafter released Edgin to return to regular duty without restriction on November 19, 2001. During Edgin's final visit with Dr. Rosenzweig on February 11, 2002, he determined that she had achieved maximum medical improvement with regard to both her knee and ankle. He assessed her with a zero percent impairment rating.

Edgin began physical therapy with Richard Matthews on October 24, 2001. She did not initially inform Matthews of a back injury or that she had a history of back problems. However, nearly one year later, Matthews issued a "To Whom It May Concern" letter in which he reported that when Edgin fell, she experienced pain in her low back as well as her right knee and right ankle.

Meanwhile, Edgin also saw Dr. Reggie Rutherford, who examined her lower back on

December 13, 2001. On that date, Dr. Rutherford found no evidence of muscle spasms and no abnormalities of Edgin's lower extremities. He subsequently performed an EMG of her lower extremities, on January 10, 2002, which also yielded normal results. That is, the EMG revealed no evidence of lumbar radiculopathy or peripheral neuropathy to account for Edgin's right-leg symptoms. Dr. Rutherford noted that, "This correlates with her clinical examination and diagnostic work up to date."

Edgin thereafter obtained approval for a change of physician to Dr. Scott Bowen, whom she saw on April 30, 2002. On that day, Dr. Bowen reported Edgin's history of a work-related right-knee and right-ankle injury, but did not note complaints of a back injury. He did note that previous MRIs of her lumbar spine, right knee, and right ankle showed no abnormalities. He concurred with Dr. Rosenzweig's assessment that no impairment rating was warranted, and he offered no treatment recommendations. However, it is clear from the medical records that as of the date that Edgin saw Dr. Bowen, she had not yet received an MRI of her lumbar spine.

In the interim, Edgin returned to Dr. Rook. On November 27, 2001, she reported having back pain. Next, on June 5, 2002, upon referral from Dr. Rook, Edgin sought treatment from Dr. David Oberlander, a neurologist. At this time, her chief complaint was right-leg pain, but the doctor also noted pain in the "low back region." Dr. Oberlander ordered a MRI of Edgin's lumbar spine which revealed mild disk degeneration at the L4-5 level with evidence of a right posterolateral annular tear but no herniated disk; mild disk desiccation at the L2-3 level; and no stenosis or foraminal narrowing. On a follow-up visit, Dr. Oberlander noted that the annular tear at the L4-5 level could account for Edgin's pain and was most likely the major cause of her problems; he also noted the presence of muscle spasms in her back, which he reported was most likely secondary to her July 16 accident.

Subsequently, in a "To Whom It May Concern" letter dated April 20, 2004, Dr.

Oberlander expressed a more certain opinion regarding the relationship between Edgin's back condition and her symptoms. He reported:

Carolyn Edgin [the claimant] is a patient of mine with significant low back pain caused by a posterolateral right annular tear localized at L4-5. This lesion accounts for her back pain and discomfort and was demonstrated on prior MRI imaging of the Low Back. It also produced radiating pain into the right leg and knee region. She began to suffer these symptoms after a work-related injury which occurred back on 7-16-01. In my opinion, her pain and MRI functions are a **direct** result of this injury.

(Emphasis in original.)

Dr. Oberlander referred Edgin to Dr. Anthony Russell for radiculopathy and for evaluation of her continued pain. On March 13, 2003, Dr. Russell reported that Edgin gave "an approximately three-year history of pain in her low back with radiation into the lower extremity." He also noted that Edgin described the July 16, 2001 "stumbling incident" as the onset date of her pain. After reviewing Edgin's lumbar MRI, Dr. Russell concluded that surgery was not warranted at that time. He referred her to Dr. Thomas Hart for a discogram to determine the cause of her ongoing pain.

In his initial notes dated April 21, 2003, Dr. Hart noted that Edgin reported that she developed increasing back pain over the next few days following the July 16 accident. He further noted that she relayed that she had no previous back problems. Dr. Hart stated in his subsequent discogram procedure notes that Edgin had "legitimate back complaints. She has discogenic pain with external disk disruption at the 4-5 level consistent with her on-the-job injury."

Dr. Russell again saw Edgin after Dr. Hart performed the discogram. In his clinical notes dated June 30, 2003, Dr. Russell noted that during the discogram, the injection of the medium into Edgin's "L4-5 disc reproduced her pain in its entirety and [that] the disk appeared to be circumferentially disrupted." On August 26, 2003, Dr. Russell performed lumbar decompression and fusion of Edgin's L4-5 disks. During the three-month follow

up after surgery, Dr. Russell reported “some improvement overall” and stated that “[t]he pain has certainly modified and changed in nature.” While Edgin still experienced some ambulatory problems at that point, Dr. Russell informed her that her condition should continue to improve. On November 10, 2003, he assessed Edgin with a 15% partial impairment rating to the body as a whole, based on her back condition. He estimated that she would need a minimum of six months to achieve maximum medical improvement.

The Commission determined that Edgin failed to prove that she sustained a lower back injury on July 16, 2001. The Commission determined that Edgin was not a credible witness, in part, because it found that she failed to report a work-related back injury until fourteen months after the July 16, 2001 incident, even though she received continuous care and treatment from numerous doctors for injuries to her right knee and right ankle. The Commission also relied on the fact that Edgin could not recall precisely when she began having back pain and that she admitted that she did not report any alleged work-related back injury to any of her treating physicians for at least fourteen months after her injury. Further, Edgin denied that she told Dr. Rosenzweig that she suffered from chronic back pain, but admitted that she did not give him a history of a work-related injury.

With regard to the medical evidence, the Commission noted that Dr. Rook reported that Edgin has a past medical history significant for a bulging disk in her back and that Dr. Russell reported that Edgin gave a three-year history for back pain (meaning she reported back pain that predated her work-related injury). The Commission also acknowledged Dr. Orberlander’s opinion that Edgin’s pain and MRI findings are causally connected to her July 16 work-related accident. However, it placed “minimal weight” on Dr. Orberlander’s opinion because it determined that it was based on an inaccurate history provided by Edgin. Accordingly, the Commission denied benefits, and this appeal followed.

Edgin now raises three arguments: 1) the Commission erred in finding that she was

not a credible witness because she failed to report back problems to her physicians for fourteen months after her injury; 2) there was sufficient evidence, independent of any alleged incorrect history provided by Edgin, to support that her annular tear of her disc was the direct cause of her knee and ankle problems; 3) the Commission erred in determining that she failed to prove that her back injury was work-related.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Whitlach v. Southland Land & Dev.*, 84 Ark. App. 399, 141 S.W.3d 916 (2004). Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Id.* The Commission is not required to believe the testimony of any witness, and it may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Holloway v. Ray White Lumber Co.*, 337 Ark. 524, 990 S.W.2d 526 (1999). The Commission may accept or reject medical opinions and determine their medical soundness and probative force. *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999). We affirm here because reasonable minds could have concluded that Edgin failed to prove that her back injury was work-related.

#### *I. Credibility Determination*

Edgin's first argument is that the Commission erred in finding that she was not a credible witness because she failed to report her back injury to her treating physicians until September 2002, approximately fourteen months after her injury. Edgin points to various medical evidence as proof that she did not wait fourteen months to report a back-related

injury. Nonetheless, her argument fails because the Commission did not make its credibility determination solely on its assertion that she failed to report her injury for fourteen months. The Commission determined that Edgin was not a credible witness also because her initial medical records did not corroborate her testimony that she suffered a work-related back injury; because the medical records suggested that she had prior back problems; and because she did not allege a back injury on the injury form, which itself was not completed until three months after the accident.

For example, Edgin denied that she reported chronic back pain to Dr. Rosenzweig, but now attempts to use that same report to establish that she *reported* a work-related back injury. Moreover, Dr. Rosenzweig's record from October 22, 2001, is completely devoid of any complaints of back pain that radiated into her leg, which was what precipitated her later back surgery. In addition, while Edgin told Dr. Hart that she had no previous back problems, Dr. Rook treated her for lower back pain of an unknown etiology in 1999. She also relayed a history of a bulging disk to Dr. Rook on November 27, 2001, at a time when her records in this case show that she had not yet received an MRI to determine the presence of a bulging disc. If, indeed, she had a "history" of bulging discs, that history must have preceded the injury in this case.

Additionally, even though Dr. Rook's record from November 27, 2001, relays, "Rx of bulging disk in low back — having problems," there is no reference to a work-related cause of the bulging disk. Nor is there an objective finding of a bulging disk in Edgin's medical records as of this date, because the MRI revealing the bulge was not performed until June 7, 2002. Finally, there is no reference to a work-related back injury or to any leg numbness or burning in Dr. Rook's July 14, 2002 report, even though Dr. Oberlander had ordered the MRI for leg pain the month before.

Thus, even if we discounted the Commission's conclusion that Edgin failed to report

her injury for fourteen months, other evidence amply supports the Commission's finding that Edgin was not a credible witness.

## *II. Proof of a Compensable Injury*

Because Edgin's remaining arguments each relate to the sufficiency of the evidence supporting the Commission's denial of benefits, we address them together. She argues that there was sufficient evidence, independent of any alleged incorrect history of a back injury, to support that the annular tear of her disc was the direct cause of her right-knee and right-ankle problems. Thus, she asserts that reasonable minds would not have reached the Commission's conclusion that she failed to prove that she sustained a compensable back injury.

In order to prove that a specific incident injury is compensable, a claimant must prove by a preponderance of the evidence that: 1) the injury arose out of and in the course of employment; 2) that the injury caused the physical harm to the body resulting in the need for treatment; 3) that the injury was caused by a specific incident and is identifiable by a time and place of occurrence. In addition, any medical evidence used to establish the existence of the injury must be supported by objective findings. Ark. Code Ann. § 11-9-102(4)(A)(i) & (D) (Supp. 2005).

Edgin argues first that there was no basis for the Commission to disregard Dr. Oberlander's opinion because his opinion does not reflect any "inaccurate history" that she relayed to him. She further asserts that Dr. Oberlander and Dr. Hart performed tests that objectively demonstrated that she suffered a back injury and that these doctors, as well as Dr. Russell, concluded on the basis of the objective tests, rather than her history, that her annular tear occurred on July 16, 2001, and was the direct cause of her problems.

She also maintains that Dr. Rosenzweig's and Dr. Bowen's opinions are not credible because Dr. Rosenzweig failed to consider her back pain as the cause of her leg problems and

because Dr. Bowen concurred with Dr. Rosenzweig's assessment, partially because he erroneously thought that Dr. Rosenzweig had ordered a lumbar MRI that was normal. Finally, she asserts that reasonable minds could not reach the Commission's conclusion because it found both that she did not initially report a back problem and that her back problems were preexisting.

We agree that Dr. Bowen inaccurately concluded that Edgin had obtained a normal lumbar MRI because she did not have an MRI of her back taken until after she saw Dr. Bowen. However, Dr. Bowen's mistake does not negate the other substantial evidence supporting the Commission's decision. Moreover, it is not inconsistent for the Commission to find that Edgin failed to report a work-related back injury and to also find that she had a preexisting back condition. Her three-year history of back problems was not reported to Dr. Russell until March 13, 2003, well after her initial visits with most of her various treating physicians.

There appears to be no doubt that Edgin at some point suffered from an annular tear in her disc that caused the pain and numbness in her right leg. The dispositive issue is whether that back condition was caused by her July 16, 2001 tripping incident that was clearly employment-related. However, Edgin was not required to prove the causal connection between her injury and her back condition by objective medical evidence; it is sufficient if objective medical evidence proves the extent and existence of an injury and a preponderance of the nonmedical evidence proves the causal connection. *Horticare Landscape Mgmt. v. McDonald*, 80 Ark. App. 45, 89 S.W.3d 375 (2002).

Because the only real evidence of a causal connection is Edgin's assertion that she suffered a back injury on July 16, 2001, and because the Commission found that she was not a credible witness, substantial evidence supports the Commission's finding that she failed to prove that she suffered a work-related back injury on that date. We recognize that Edgin's

failure to initially report a back injury, alone, would not preclude a finding that her injury was compensable because, as she correctly notes, some injuries do not manifest themselves immediately. However, that is not the case here, where Edgin failed to initially report not only a work-related back injury, but failed to report to her initial treating physicians that she experienced any back pain within any close proximity to her injury. Yet, after doctors began to investigate a causal connection between Edgin's back condition and her right-leg pain and numbness, which was not reported until April 30, 2002, she *then* began reporting that she experienced progressive pain *within a few days following her injury*. Thus, this is not a case in which medical records simply show that the symptoms failed to initially manifest; rather, Edgin did not report that she experienced any back symptoms following her injury until after it became apparent that she needed further medical treatment for her leg.

Finally, we cannot agree that Drs. Oberlander, Hart, and Russell based their opinions on objective test findings only and not on the inconsistent history she provided to them. In his "To Whom It May Concern Letter," dated April 20, 2004, Dr. Oberlander clearly states, "She began to suffer these symptoms [low back pain] after a work related injury which occurred back on 7-16-01. In my opinion, her pain and findings are a **direct** result of this injury." (Emphasis in original.) In his initial notes of April 21, 2003, Dr. Hart stated that Edgin complained of increasing back pain over the next few days after the July 16 incident; in his discogram procedure notes, he further noted that Edgin's discogenic pain was consistent with her work-related injury. Similarly, Dr. Russell noted that Edgin reported to him that the stumbling incident triggered the onset of her pain.

Thus, it is clear that these doctors relied on Edgin's history to determine the causal connection between her back condition and her work. As a practical matter, there is no other way the doctors could have concluded that Edgin's work-related injury was the cause of her condition – they could not have relied on the earlier medical records that did not relate her

back pain to her injury. It was certainly not unreasonable for these doctors to rely on Edgin's history; that is how doctors routinely obtain medical information from a patient. However, the Commission, as the arbiter that determines issues of credibility and the weight to give to medical evidence, could have reasonably determined that these doctors' opinions were not reliable because the history provided by Edgin was not reliable.

Affirmed.

ROBBINS and CRABTREE, JJ., agree.